IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL WRIT NO. 1695 OF 2003.

1. M/s. Kajal Industries,
   25/6/3, Jogendra Basak Road,
   Kolkata - 700 36.

2. Mr. Subir Roay,
   25/6/3, Jogendra Basak Road,
   Kolkata - 700 036. .. Petitioners.

V/s.

1. M/S. Pinnacle Marketing
   Private Limited, having
   Office at 11/8-14,Vaishali Daimond,
   Arch, Off. Lokmanya Tilak Road,
   Dahisar (W), Mumbai 400 068.

2. Shri Shashank Dande,
   Director of M/s Pinnacle
   Marketing Pvt. Ltd. 55B,
   Adyanath Saha Road,
   Near Adyanath School,
   Calcutta - 700 048.

3. The State of Maharashtra. ..Respondents.

Shri R.V. Govilkar for the appellants.
Shri S.V. Marwadi for respondents 1 and 2.
Shri B.R. Patil, P.P. for the State.

CORAM : ANOOP V.MOHTA, J.

DATE : 21ST OCTOBER, 2004.

ORAL JUDGMENT

. The petitioners have invoked the inherent powers as contemplated under Section 482 of the Code of Criminal Procedure Code (Cr.P.C.) and thereby challenged the Judgment and Order dated 19.9.2002,

passed by he learned Sessions Court in Criminal Revision Application No.288 of 2002, thereby the learned Additional Sessions Judge, Greater Bombay, has allowed the revision application and quashed and set aside the order dated 5/3/2002 and restored the complaint to the file and directed to proceed in accordance with law on the complaint. Therefore, the present petition by the accused.

2. Complainant-respodnents No. 1 and 2 in the present writ petition, have filed a complaint under section 429 of Indian Penal Code against the petitioners, on 18th December, 2001, and contended therein, that Mr. Subir Roy, petitioner No.2, on behalf of petitioner No.1 had wrongfully represented to respondent No.1, to procure future orders and induced them to pay Rs. 5 lacs and accordingly, same was paid at Calcutta. However, in view of the various talks and negotiations which took place at Mumbai, respondent No.1, had executed an agreement dated 25th September, 2001, at Calcutta. Respondent No.1 on realising the various lacunas in the said agreement decided to cancel the same. Therefore, by a letter dated 28th September, 2001, demanded the refund of Rs. 5 lacs. It has been

contended that an office of the complainant is situated within the jurisdiction of this Court where various talks took place between the parties and therefore, this Court has jurisdiction and try and entertain the complaint. The statement was recorded on 1/1/2002. The learned Metropolitan Magistrate, however, by an order dated 5/3/2002, returned the complaint for presenting before the competent Court having jurisdiction, as provided under Section 201 of Cr.P.C, as the basic agreement took place at Calcutta.

3. The respondent-original complainant had therefore, preferred Criminal Revision Application No. 288/2002 and made the State of Maharashtra, as a party. The petitioners however, were not made parties in the said revision application. The Revisional Court after considering the case of the respondents, by its impugned order dated 19th September, 2002, allowed the revision and held that the assurances and the inducements were given during the talks held at Mumbai. The agreement took place at Calcutta is only consequential to the same. Therefore, further held that both the Courts have jurisdiction to entertain and try the matter. Accordingly, the complaint was restored and remanded

back to the Court to proceed in accordance with law.

4. Heard the learned Counsel appearing for the petitioners, as well as for the respondents. The basic contention of the petitioner has been that the learned Additional Sessions Judge, Greater Bombay, before allowing the revision against the order of return of the complaint, should have issued notice and granted hearing to the petitioners-accused, in the original complaint. The learned Judge ought to have seen that Metropolitan Magistrate, Borivali, had no jurisdiction to try and entertain the matter at Mumbai and therefore, had exceeded its jurisdiction and power under section 397,399 and 401 of Cr.P.C. The original petitioners accused should have been directed to be made a party before allowing the revision of the complaint. Reliance has been placed on the Judgment reported in 2003 Bom.C.R.(Cr.) 558 (Suresh V. State of Maharashtra), wherein the application seeking permission to take part in the criminal revision was allowed.

5. The learned Advocate appearing for the respondent, however, has resisted the same and relied on the judgment reported in 1993 Mah.L.J., 609, Laxmi

Kishore Tonsekar V. State of Maharashtra and contended that no such notice was required to be given in such cases at this stage There was no question of giving any hearing, for the first time at the revision stage to the petitioenr/acccused.

6. The basic scheme of Chapter XV and XVI relating to the complaint to Magistrate and commencement of proceeding before the Magistrate has been elaborated in the following decisions of the Apex Court reported in A.I.R. 1963 S.C. 1430 Chandradeo Vs. Prakash Chandra, A.I.R. 1976 S.C. 1947 in Nagawwa Vs. Veeranna and recently, in 2004 (7) Judgment Today, (Adalat Prasad V. Rooplal Jindal), The declaration of the Apex Court in Nagawwa Vs. Veeranna (Supra) is as follows;

> "The scope of the inquiry under section 202 is extremely limited only to the ascertainment of the truth falsehood of the allegations made in the complaint -- (i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may leave. In fact, in proceedings under section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not." (emphasis added).

The Bombay High Court has also in Laxmi Kishore (Supra) held as under;

> "The impugned order passed by the learned Magistrate issuing show cause notice to the accused is thus, clearly illegal and beyond the scope of section 202 of Criminal Procedure Code."
>
> "The learned Additional Sessions Judge dismissed the Revision Application of the petitioner only on the ground that the petitioner refused to join the accused as party respondents to the Revision Application. In view of the fact that the accused person had no locus standi to appear before issuance of process, there was no need to join them as party respondents. Since the grievance of the petitioner-complainant was against the issuance of show cause notices to the accused in an enquiry under section 202 of Criminal Procedure Code, the learned Addl.Sessions Judge was not justified in insisting upon joining the accused in Revision Application. The persons mentioned, as accused cannot be said to be prejudicially affected by reason any direction for further enquiry under section 202, Criminal Procedure code passed either by the Sessions Court or by the High Court."(emphasis added).

In Adalat Prasad V. Rooplal Jindal and others, (Supra) the Apex Court has held as under;

> "But after taking cognizance of the complaint and examining the complainant and the witnesses if he is satisfied that there is sufficient ground to proceed with the complaint he can issue process by way of summons under section 204 of the Code. Therefore, what is necessary or a condition precedent for issuing process

> under section 204 is the satisfaction of the magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated under section 202 that there is sufficient ground for proceeding with the complaint hence issue the process under section 204 of the Code. In none of these stages the code has provided for hearing the summoned accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provisions in the Code." (emphasis added)

. According to me above JUdgments, clinches the issue.

7. The main question therefore, as argued by the learned Advocate for the petitioner, based on the provisions of Sections 397, 399 and 401 of Cr.P.C.,and decision in Suresh (Supra) is that no order under these sections should have been passed to the prejudice of the accused or other persons without giving hearing and opportunity to the accused. He has therefore, contended that as admittedly, the petitioners were not even made party, there is a clear breach of these provisions and on that ground itself, impugned order is bad as was passed without hearing to the petitioners.

8. The learned advocate appearing for the

respondents has opposed the same and placed reliance on the Laxmi Kishore case (Supra). The accused has no right or locus-standi to be heard before issuances of the process against him. Therefore, at this initial stage itself, in enquiry under section 202 of Cr.P.C. there is no question of allowing any application for adding or joining such person as party and to be heard on the question of issuance of summons, even on the ground of jurisdiction. The right of hearing, in revision against the order of the return of summons, as sought to be extended according to me is not necessary in view of above quoted decisions of the Apex Court. The Bombay High Court in Laxmi Kishore (Supra) has already considered this aspect. It has been held that The petitioner-accused has no locus standi or right of hearing before the issuance of process and such a person is not entitled to claim right of hearing or show cause notice even before the Revisional Court. The learned Magistrate, even after remand of the matter, is required to consider the same on merit before issuance of summons. In present case admittedly, the complaint was returned to the complainant on the ground of jurisdiction and not on merit. The Apex Court’s and decision of Bombay High Court in Laxmi Kishore (Supra),

on the issues are akin to the scope and principle of Chapter XV of Cr.P.C. These Judgments were not cited and referred in case of Suresh (Supra) as relied by petitioner. The decision as reported in the case of Suresh (Supra) has no where dealt with the earlier view of Laxmi Kishore (Supra). On fact, also decision of Suresh's case (Supra) is distinguishable, as there was an application filed by the accused for seeking permission to take part in the proceeding before the Revisional Court and same was rejected. However, High Court had allowed thesame. In present case no such appliation was filed by the petitioner. In the case of Suresh (Supra) there wasno opposition to the issue. In the present case there is contest to the issue. In my view also decision in Laxmi Kishore (Supra) is akin and close to the present issue and is based on the Apex Court's decision elaborating the scheme of the Cr.P.C., relating to the right of the notice and of hearing to the accused by the Magistrate and even by the Revisional Court, before issuance of summons.

9. It appears that, interim relief was granted by dated 27/11/2003, for fixed period, which was not extended. However, by an application dated 31/5/2004,

it was extended. The non bailable warrant, was also stayed. It means that the learned Court after the order of remand has applied its mind and issued process. The petitioner as failed to attend the Court, the non bailable warrant was issued.

10. However, now I have heard this matter finally and after considering the above reasoning, I am of the view that the contention, as raised by the learned Advocate appearing for the petitioner are not acceptable. The return of complaint on the ground of jurisdiction itself, amounts to final decision and cannot be said to be interlocutary order. Revision or such other proceeding against such decision is maintainable. Accordingly it was entertained and decided also.

11. Even on merit, I see no reason to interfere with the order of restoring the complaint and of remand to consider the case on merit.

12. In view of this the present petition is dismissed. The interim order stands vacated. No order as to costs.

[ANOOP V. MOHTA, J.]